80-450

Supreme Court, U. S.
FILED
SEP 2 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER 1980 TERM

AHMANSON TRUST COMPANY a corporation	) REVIEW OF
	) THE
	) APPELLATE
Plaintiffs - Respondents	) COURT OF
	) CALIFORNIA
vs	)
	) SECOND
CLAYTON W. CARNEY;	) DISTRICT
	)
JACQUETTA A. CARNEY	) 2 Civ. No.
	) 56267
Defendants- Petitioners	)

PETITION FOR WRIT OF CERTIORARI

Respectfully submitted by:

CLAYTON W. CARNEY
ATTORNEY IN PROPIA PERSONA
1710 CONNECTICUT AVENUE. N.W.
WASHINGTON, D.C. 20009

JACQUETTA A. CARNEY
ATTORNEY IN PROPIA PERSONA
6136 VENICE BOULEVARD
LOS ANGELES, CALIFORNIA 90034

TABLE OF CONTENTS

JURISDICTIONAL STATEMENT..... 1

QUESTIONS PRESENTED FOR REVIEW..... 3

ARGUMENT..... 7

FACTS OF CASE.....11

NECESSITY FOR CERTIORARI.....14

CONCLUSION.....17

CALIFORNIA SUPREME COURT OPINION.....18

CASE OPINION APPELLATE COURT.....19

TABLE OF AUTHORITIES

Title 28 Section 1257 (3)..... 1, 3

Equal Credit Opportunity Act 15 U.S.C. #1691-1691f (1976)..... 3

Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-31 (1970)..... 3

California Code of Civil Procedure #437c..... 4

Fourteen Amendment, Sec 1..... 4

Civil Right Act of 1968 and 1964..... 6

United States Constitution Article..... 6

JURISDICTIONAL STATEMENT

By this Petition, Petitioner seeks review of a decision by the California Appellate Court , Second District, filed on the 11th day of April , 1980, (Attached) affirming the Summary Judgment of the Los Angeles County Superior Court on June 13, 1978.

Because the Supreme Court of California denied Petitioners request for Hearing on June 4, 1980(Attached), the United States Supreme Court has jurisdiction to review by Writ of Certiorari according to Title 28, Section 1257(3) " where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution , treaties or laws of the United States, or where any title , right

privilege or immunity is specially set up or claimed under the Constitution , treaties or statutes of , or commission held or authority exercised under , the United States".

QUESTIONS PRESENTED FOR REVIEW

1. On where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, Title 28, Section 1257 (3) USC.

Respondent Ahmanson Trust Company, an entity supervised by the Federal Reserve Board and the Federal Deposit Insurance Corporation as Ahmanson Bank and Trust Co. at the time this action ensued in 1976, was awarded a Summary Judgment pursuant to California Code of Civil Procedure #437c, while Petitioners were seeking discovery of Respondents compliance with the officers Federal Statutory Regulatory obligations pursuant to the Equal Credit Opportunity Act 15 U.S. C. # 1691-1691f(1976) Title Vlll of the Civil Rights Act of 1968, 42 U.S.C. 3601-31 (1970)

Whether the Respondent Ahmanson Bank and Trust Company, as a chartered entity supervised by the Federal Reserve Board and the Federal Deposit Insurance Corporation with particular emphasis on its compliance with Federal Fair Housing Laws, was entitled to Summary Judgment while its compliance with said Fair Housing Law was being sought through discovery by Petitioners

Whether the California Code of Civil Procedure 437c, the Summary Judgment law is compatible , Constitutional under the Seventh Amendment " In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, WHETHER,

The Summary Judgment is Constitutional under the Fourteenth Amendment, Sec. 1.,

Privileges and Immunities "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

Sec. 1. Due process and equal protection of laws...nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

QUESTIONS PRESENTED FOR REVIEW

2. Whether violations of the Fair Housing Laws may be asserted as Affirmative Defenses on Plaintiffs Complaint for Money.

In the instant case , Petitioners asserted four Affirmative Defenses , two of which were based on alleged violations of Civil Rights Act of 1968 and 1964 , yet the lower Court ruled , Summary Judgment is to be granted if there is no defense to an action. The Affirmative Defenses asserted by Petitioners were considered as no defense.

ARGUMENT

At the conclusion of World War II, General Charles DeGaulle visited the scene of the Battle of Stalingrad.

He softly murmered amazing, amazing, as he toured the battleground. His Russian escorts finally asked what is amazing?

"The Germans," the General replied, "they came so far."

The same observation may be made about American Industry, it has journeyed to the top with such inhibiting forces internally.

A lay President Lyndon B. Johnson, as President and legislator supervised the enactment of Civil Rights Legislation that would give the citizenry a source of financing in their homes, through their financial institutions, to leverage their families industry to whatever purpose enterprise could carry it to.

The Civil Rights Act of 1964 and 1968, which the Petitioners had cited in their pleadings as Affirmative Defenses, were brought forth under a lay President Lyndon B. Johnson.

In 1957 , the first Civil Rights Act in 82 years passed the Congress under Mr. Johnsons Senate leadership. Four later acts were adopted within the next decade in 1960, 1964, and 1965 and 1968.

The Civil Rights Act of 1968 was intended to outlaw discriminatory practices in financing housing and in commercial transactions. If the Secretary of Housing and Urban Development could not achieve a voluntary solution with the concerned parties, the Secretary would be authorized to have an administrative hearing,if a violation of the law was found , the Secretary was

authorized to issue a judicially enforceable cease and desist order.

Now this is what President Johnson thought he was getting, but this administrative hearing and judicially enforceable cease and desist order provision was neatly fileted from the Civil Rights Act of 1968 by the special interest, as President Truman used to refer to them,

Now there is great debate and deliberation in the Congress as to 12 years later in 1980, whether we are going to get the administrative hearing and judicially enforceable provisions that we were supposed to get in 1968 Civil Rights Act.

Now there is a way this court may deliver justice to the industry of this country, by ruling that failure to provide a real estate application and consideration

for a real estate loan by a financial institution under the supervision of the Federal Reserve Boardor the Federal Deposit Insurance Corporation is a defense on the default of unsecured loans by the debtor.

This is really what this case is all about, the Petitioners had residential property in a redlined area, and the Responden represented falsely that they did not make real estate loans. Subsequent revelation of SEC financial data confirmed that Responder did indeed make real estate loans.

The loss on residential property in the United States is less that 1% nationwide but property owners today are paying up to 40 % for loans on real estate since the Federally Supervised financial institutions discriminate freely and with immunity.

FACTS OF CASE

The Petitioners Clayton W. Carney and Jacquetta A. Carney began series of loan transactions with the Respondent Ahmanson Bank & Trust Company in December 1975.

At each successive renewal of the unsecured note the Petitioner Clayton W. Carney sought mortgage financing on Petitioners residential property. Petitioner Clayton W. Carney was advised by Respondent officer that Ahmanson Bank & Trust Company did not make real estate loans.

Petitioner Jacquetta A. Carney completed a Guaranty Agreement on subject loan.

Respondent was a one-bank holding company and was regulated by the Federal Reserve and the Federal Deposit Insurance Corporation.

The final loan and commercial transaction was on September 22, 1976, Petitioner signed subject note after being assured by Respondent officer, the Respondent did not make real estate loans among other assertions.

At the 90 day loan maturity, Petitioner paid interest of $359.18.

Respondent sued on subject loan on January 21, 1977, Petitioners answered with four Affirmative Defenses, of Civil Rights Act of 1968 violation, delay of notice of non-payment of 4 months, fraud, duress and undue influence .

Petitioners cooperated with Respondent discovery and then Petitioners sought discovery, before the Petitioner could discover Respondent compliance with Federal Reserve Board and Federal Deposit Insurance Corporation Civil Rights Compliance

and after such deposition was noticed, Los Angeles County Superior Court granted Respondent Motion for Summary Judgment on June 13, 1978.

Petitioners appeal from this Judgment.

NECESSITY FOR CERTIORARI

The Federal Reserve Board and the Federal Deposit Insurance Corporation regulated the Respondent Ahmanson Bank & Trust commercial transactions in the year 1976 at time this action ensued.

No credence whatsoever was given to this fact by the lower courts in each affirming Respondents Summary Judgment.

American Industry is entitled to rely on the integrity of their financial institutions as creditors, and as President Lyndon B. Johnson stated " there should be no need for laws to require men to deal fairly and decently with their fellowman. There should be no need to enact a law prohibiting discrimination in housing"

However, when such discrimination is alleged in an answer to a law suit, the regulated institution, such as Respondent

Ahmanson Bank & Trust Company is obliged through Discovery to reveal their compliance with said regulations.

To award a Summary Judgment to a Federally Regulated Financial Institution without requested Discovery of same by Defendant defeats the purpose of all the Civil Rights Acts and Creditor and Debtor protection Statutes.

The Summary Judgment is to be granted when there is no triable issue of fact, the lower courts say there was no discrimination in commercial transactions, and from 1871 to 1957, <u>there were rumors of discrimination</u>, but it was industry that pushed through the Civil Rights Act of 1964 and 1968, and industry such as represented by Petitioners are entitled to know if any of the Federal Creditor or Debtor Statutes areworking.

There is evidence to confirm that there has not been one iota of compliance with the Civil Rights legislation of the 1960s by the Banks of this country as required by the Federal Regulatory Agencies.

What has to be considered is who benefits by non-compliance. Emphasis added

As Skakespearre said " Sweet are the fruits of adversity."

However, if the United States Constitution , Article 7," In suits at common law, where the value in controversy exceeds twenty dollars, the right of trial by jury shall be confirmed" had been implemented and credit had been made available to the masses, what a dynamic force, Instead of cauldrons in our cities , all of industrys great experiment harnessed, but even today the financial and legal communities really are not sure of industrysworthiness.

CONCLUSION

The Petitioners ability to secure the rights guaranteed him and her by the United States Constitution rests upon review of this court.

In a larger sense review would be the beginning of the end of the stifling of American Industry.

WHEREFORE, Petitioner respectfully prays that this court grant Petitioners request for a Writ of Certiorari.

Los Angeles, Calif.
September 2, 1980.

Respectfully submitted

Clayton W. Carney
CLAYTON W. CARNEY

Jacquetta A. Carney
JACQUETTA A. CARNEY

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

DEC 4 19[illegible]

I have this day filed Order

HEARING DE[illegible]

In re: 2 Civ. *No.* 56267

Ahmanson Trust Company

vs.

Carney et al.

Respectfully,

Clerk

72076-877 7 79 4M OSP

NOT TO BE PUBLISHED
IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

AHMANSON TRUST CO., Plaintiff and Respondent, v. CLAYTON W. CARNEY, et al., Defendants and Appellants.	2 Civ. No. 56267 (Super. Ct. No. C-187,467)

COURT OF APPEAL-SECOND DIST.
FILED
APR 11 1980
CLAY ROBBINS, JR. Clerk
By Deputy Clerk

APPEAL from a judgment of the Superior Court, Los Angeles County. Charles H. Phillips, Judge. Affirmed.

Clayton W. Carney and Jacquetta A. Carney in pro. per., for Defendants and Appellants.

A. J. Weiss for Plaintiff and Respondent.

Petitioners appeal from a summary judgment granted to the Ahmanson Trust Company, respondent, on their suit on a promissory note for money loaned and on a guaranty of the loan. We affirm.

On December 8, 1975, respondent loaned appellant $10,000 for 90 days and appellant executed a promissory note for the amount. After the then due interest was paid, the loan was renewed for 90-day periods on March 8, 1976, and June 7, 1976. New notes were executed on these dates. On June 24, 1976, $5,000 more was borrowed by appellant and he executed a new note bearing a face amount of $15,000 with 9-1/2%. Co-appellant (wife) executed a General Continuing Guaranty on June 24, 1976, in which she accepted responsibility for any present or future indebtedness of her husband to respondent, no to exceed $15,000. On September 22, 1976, the interest on the $15,000 loan was paid and it was renewed following the execution of a new note. Appellant was advised the note would not be renewed and that the principle amount with interest would be due on December 21, 1976.

On December 23, 1976, two days after the maturity of the loan, appellant paid $359.18 into California Overseas Bank, which erroneously accepted it as interest on the loan.[1/]

No further payment of interest or principle was tendered. The instant suit was initiated on January 21, 1977, to recover the principle and interest on the note or guarantee. Judgment was entered for respondent on June 13, 1978, following the granting of its motion for summary judgment.

Appellants contend that the granting of the summary judgment was erroneous; that there were triable

---

1/ The original maker of the loan was Ahmanson Bank & Trust. The bank portion was divested to California Overseas Bank. Ahmanson Trust Company at all times had the loan.

issues of fact raised by their defenses. Appellants raised as defenses fraud and deceit in representations by respondent's loan officer that no real estate financing was available and that this alleged misrepresentation was a violation of the equal credit opportunity act of 1968. (15 USCA, § 1691, et seq.)

The alleged issue of fraud is without merit. First there is no evidence that the statement of the non-availability of real estate financing was false.[2/] Further, appellant states that, at the time the statements were made, he knew them to be false. In order to constitute actionable fraud the person must rely on and believe in the representation. (Seeger v. Odell (1941) 18 Cal.2d 409, 414.)

2/ Appellant claims the bank was chartered to make real estate loans, but there is no evidence that it was part of its everyday business practice.

Appellant has also tried to raise as a defense a violation of the Equal Credit Opportunity Act. This is also without merit. The alleged violation is irrelevant to the loan at issue. The misrepresentation, if any, occurred after the original unsecured loan was made. The act itself also provides for a remedy of a civil action, and nowhere mentioned is the act's use as a defense on default of another loan. (15 USCA, § 1691e.)

Summary judgment is to be granted if there is no defense to an action (Code Civ. Proc., 437(c)). The appellant here has failed to raise any triable issues of fact.

The judgment is affirmed.

NOT TO BE PUBLISHED
IN THE OFFICIAL REPORTS.

KINGSLEY, J.

We concur:

FILES, P.J.

WONG, J.*

---

* Assigned by the Chief Justice of California.

(VERIFICATION - 446 and 2015.5 C.C.P.)

STATE OF CALIFORNIA, County of Los Angeles } ss. I, the undersigned, say: I am the

Petitioners

in the above entitled action; I have read the foregoing Petition for Writ of Certiorari

and know the contents thereof; and that the same is true of my own knowledge, except as to the matters which are therein stated upon my information or belief, and as to those matters that I believe it to be true.

I certify (or declare) under penalty of perjury, that the foregoing is true and correct.

Executed on September 2, 198 (date) at Los Angeles (place), California

(signature)

(PROOF OF SERVICE BY MAIL - 1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA
COUNTY OF Los Angeles } ss.

I am a resident of/employed in the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address/residence address is

6136 Venice Boulevard, Los Angeles, California 90034

On September 2, 19 80, I served the within Application for Writ of Certiorari

on the Appellate Court, Respondent Counsel, Attorney General in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Santa Monica, California addressed as follows: SUPREME COURT OF THE UNITED STATES
1. WASHINGTON, D. C. ~~XXXX~~ 20543

A.J. Weiss #710
9595 Wilshire Boulevard
Beverly Hills, Calif. 90212

2. Court of Appeal
3580 Wilshire Blvd.
Suite 301,
Los Angeles, Cal. 90010

3. Atty. General, Calif.
Sacramento, Calif.

I certify (or declare), under penalty of perjury,* that the foregoing is true and correct.

Executed on September 2, 1980 (date) at Los Angeles (place), California

(signature)

*Both the verification and proof of service by mail forms, being signed under penalty of perjury, do not require notarization.

WOLCOTT'S 8110. Rev. 5-76

Supreme Court, U. S.
FILED
OCT 29 1980
MICHAEL RODAK, JR., CLERK

No. 80-450

IN THE

Supreme Court of the United States

October Term 1980

AHMANSON TRUST COMPANY, a corporation,
Plaintiff-Respondent,

vs.

CLAYTON W. CARNEY; JACQUETTA A. CARNEY,
Defendants-Petitioners.

ON APPEAL FROM THE COURT OF APPEAL, SECOND APPELLATE DISTRICT, STATE OF CALIFORNIA.

BRIEF IN OPPOSITION TO A PETITION FOR WRIT OF CERTIORARI.

A. J. WEISS,
9595 Wilshire Blvd., Suite 710,
Beverly Hills, Calif. 90212,
(213) 272-8667 and 273-8667,
Attorney for Plaintiff-Respondent, Ahmanson Trust Company.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

TABLE OF CONTENTS

	Page
Statement of Facts	1
Argument	2
1. Introduction	2
2. A Review by Writ of Certiorari Is Not Warranted Since There Is No Federal Question of Substance to Be Determined With Reference to California's Summary Judgment Statute	2
3. There Is No Federal Question of Substance to Be Determined With Respect to the Fair Housing Laws or the Civil Rights Act of 1968	4
Conclusion	6
Appendix A. Summary Judgments	App. p. 1

TABLE OF AUTHORITIES

Cases — Page

Bank of America National Trust & Savings Association v. Oil Well Supply Co. of California (1936) 12 Cal.App.2d 265, 55 P.2d 885 3

Fidelity and Deposit Co. of Maryland v. United States (1902) 187 U.S. 315, 23 S.Ct. 120, 47 L.Ed. 194 3

Peterson, Ex Parte (1920) 253 U.S. 300, 40 S.Ct. 543, 64 L.Ed. 919 3

Constitution

United States Constitution, Seventh Amendment 3

United States Constitution, Fourteenth Amendment 4

Rules

Federal Rules of Civil Procedure, Rule 56 3

Rules of the Supreme Court of the United States, Rule 23, par. 1(f) 3

Statutes

California Code of Civil Procedure, Sec. 437(c) ... 2, 3

United States Code, Title 42, Sec. 3601 et seq. 4

United States Code Annotated, Title 15, Sec. 1691 et seq. 4

United States Code Annotated, Title 15, Sec. 1691(a)(1) 4

United States Code Annotated, Title 42, Sec. 3605 ... 5

No. 80-450

IN THE

Supreme Court of the United States

October Term 1980

AHMANSON TRUST COMPANY, a corporation,
Plaintiff-Respondent,

vs.

CLAYTON W. CARNEY; JACQUETTA A. CARNEY,
Defendants-Petitioners.

BRIEF IN OPPOSITION TO A PETITION FOR WRIT OF CERTIORARI.

Statement of Facts.

The Petitioners have attempted in their Petition to set forth the pertinent facts relating to this matter. Unfortunately, however, Respondent cannot agree that the facts which they have stated are the critical facts upon which their request for Writ of Certiorari should be determined.

The proper facts for consideration are those which are set forth in the opinion of the Court of Appeal of the State of California, Second Appellate District, Division 4, which was filed on April 11, 1980, and which is appended to Petitioner's Petition for Writ of Certiorari.

ARGUMENT.

1. Introduction

Petitioner's request for a Writ of Certiorari should be viewed for what it really is. It is not an effort to have important federal and constitutional questions decided. On the contrary, it is a "last-ditch" attempt on the part of the debtors who have borrowed money from a bank to seek to find some excuse to justify their failure to repay the sum when it was due, and avoid ever having to repay that loan. When Respondent refused to convert the series of short-term, unsecured loans which it had made to Petitioners, and which had become due and in default, to a long-term loan secured by real estate, the Petitioners herein claimed, *without basis therefor*, that their civil rights were violated in some vague, unspecified manner as a means for justifying such failure to repay the loans. Defeated in the trial court and in the California Appellate Courts, Petitioners now seek a review by the United States Supreme Court. It is respondent's position that not only were the decisions of the California trial and appellate court entirely proper, but that there are no federal questions of substance to be determined in this matter.

2. A Review by Writ of Certiorari Is Not Warranted Since There Is No Federal Question of Substance to Be Determined With Reference to California's Summary Judgment Statute.

Petitioners have sought to invoke the jurisdiction of the United States Supreme Court by questioning the constitutionality of the statute of the State of California establishing the summary judgment procedure. That statute which is California Code of Civil Procedure Section 437(c) provides for the granting of a summary judgment against a party in

situations where there is no triable issue of fact involved and the matter can be determined as a matter of law.

For the first time in this litigation, Petitioners are raising that issue in their Petition for Writ of Certiorari filed in the United States Supreme Court. They did not raise the issue at any prior stage of the proceedings in the trial court, in the California Court of Appeal, and in the California Supreme Court. Under the circumstances, it would appear that Petitioners' Petition for Writ of Certiorari does not comply with paragraph 1.(f) of Rule 23 of the Rules of the Supreme Court of the United States, for they do not mention anywhere therein the manner and circumstances of their raising that issue.

The question of the constitutionality of California Code of Civil Procedure Section 437(c), the summary judgment statute, and its compatibility with the Seventh Amendment to the United States Constitution relating to the preservation of the right of trial by jury, was considered by an appellate court in California in the case of *Bank of America National Trust & Savings Association v. Oil Well Supply Co. of California* (1936) 55 P.2d 885, 12 Cal.App.2d 265, and it was held therein that the statute is not unconstitutional as depriving a defendant of the right to trial by jury.

The summary judgment statute of California bears great similarity to the summary judgment statutes utilized in federal cases as the same has been embodied in Rule 56 of the Federal Rules of Civil Procedure. In prior cases the United States Supreme court has considered the same question, namely the validity of the similar Federal Summary Judgment Statute in light of the provisions of the Seventh Amendment relating to trial by jury. See *Ex Parte Peterson* (1920) 253 U.S. 300, 40 S.Ct. 543, 64 L.Ed 919, and *Fidelity and Deposit Co. of Maryland v. United States* (1902) 187 U.S. 315, 23 S.Ct. 120, 47 L.Ed 194. In each

of these cases, it was determined that the summary judgment procedure does not infringe the constitutional right to trial by jury.

Although Petitioners suggest that their rights to due process under the Fourteenth Amendment to the United States Constitution have been violated, they do not specify how or what manner that may have occurred, they cite no authority therefor, and raise this issue for the first time in this litigation.

Inasmuch as the issue has previously been determined and settled by the United States Supreme Court, it is respectfully submitted that there is no federal issue of substance to be determined by the court at this time upon the Petition for Certiorari filed by the Petitioners particularly insofar as it relates to the constitutionality of California's summary judgment statute.

3. There Is No Federal Question of Substance to Be Determined With Respect to the Fair Housing Laws or the Civil Rights Act of 1968.

The Equal Credit Opportunity Act (15 USCA §1691 et seq.) is a group of statutes designed to prevent discrimination by a creditor ". . . on the basis of race, color, religion, national origin, sex or marital status or age. . . ." 15 USCA §1691(a)(1).

The portions of the CIVIL RIGHTS ACT of 1968 (42 USC §3601 et seq.) cited by Petitioners relate to a group of statutes designed to prevent discrimination in the financing of housing and prohibit denial of a loan or discrimination ". . . because of the race, color, religion, sex, or national origin of such person. . . ." who applies for the loan "for the purpose of purchasing, constructing, improving, repairing, or maintaining a DWELLING . . ." (Emphasis added).
42 USCA §3605.

In their declarations filed in opposition to Respondent's Motion for Summary Judgment, the Petitioners totally failed to set forth facts which in any manner suggested that they had been discriminated against by reason of their race, color, religion, sex, marital status, age or national origin.

Furthermore, the defendants never suggested that a "dwelling" was involved or that the loan which was wanted was for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling. The facts in the record speak very much to the contrary.

While the Equal Credit Opportunity Act and the Civil Rights Act of 1968, in the the event of violations of some of their provisions, provide for the specific remedy of a civil action to recover damages incurred within certain specified periods of limitation, there is nothing that Respondent has been able to determine from said statutes which affords relief in the form of a defense to the payment of a loan which was previously made and renewed, and which was due at the time of a request for a real estate loan. Certainly the petitioners have cited no such statute.

The Civil Rights statutes they have cited were never intended to provide a defense to a defaulting debtor in a situation such as is here presented. At no time did the petitioners in the declarations which they presented in opposition to the motion for summary judgment rendered against them in the courts below, state facts which the court could consider to bring them within the purview of said statutes.

Even if we were to assume arguendo that in a proper case these statutes could afford an affirmative defense, that could not in any way support Petitioners' cause in this case.

Throughout the proceedings in the lower courts, and in their Petition for Writ of Certiorari, it is clear that the Pe-

titioners are unwilling to accept that the summary judgment procedure which exists not only in California but also exists under the Federal rules as well, is for the purpose of discovering through the media of affidavits whether the parties possess evidence requiring a formal trial of the action. The statutes require that to properly oppose a motion for summary judgment, facts must be stated by affidavit which establish the factual existence of such a defense, and merely pleading the defense is not sufficient. In the instant case, Petitioners have made numerous references to their pleading of affirmative defenses, but in actuality Petitioners lost in the courts below not because of their pleadings, but rather as a result of their total lack of factual evidence to set forth any defense of any nature, whether pleaded or not, to their obligation to pay their just indebtedness.

Conclusion.

As hereinbefore demonstrated, there are no federal questions of substance involved in this matter. It is simply the case of two borrowers who are trying to avoid repayment to a lender of monies which were properly loaned to them. This court should not lend its assistance to these debtors in their endeavor to escape their obligations, and accordingly, should deny their Petition for Writ of Certiorari.

Respectfully submitted,

A. J. WEISS,

Attorney for Plaintiff-Respondent, Ahmanson Trust Company.

APPENDIX A.

Summary Judgments.

§437c. [Summary proceedings on claim that action or defense is unmeritorious: Motion: Support of motion: Procedure on Motion: Judgment: Appeal] Any party may move for summary judgment in any action or proceeding if it is contended that the action has no merit or that there is no defense thereto. The motion may be made at any time after 60 days have elapsed since the general appearance in the action or proceeding of each party against whom the motion is directed or at such earlier time after such general appearance as the court, with or without notice and upon good cause shown, may direct. Notice of the motion and supporting papers shall be served on the other party to the action at least 10 days before the time fixed for the hearing. The motion shall be heard no later than 45 days before the date of trial, unless the court for good cause orders otherwise. The filing of such motion shall not extend the time within which a party must otherwise file a responsive pleading.

The motion shall be supported or opposed by affidavits, declarations, admissions, answers to interrogatories, depositions and matters of which judicial notice shall or may be taken.

Such motion shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In determining whether the papers show that there is not triable issue as to any material fact the court shall consider all of the admissible evidence set forth in the papers and all inferences reasonably deducible from such evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from

such evidence, if contradicted by other inferences or evidence, which raise a triable issue as to any material fact.

Supporting and opposing affidavits or declarations shall be made by any person on personal knowledge, shall set forth admissible evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

If a party is otherwise entitled to a summary judgment pursuant to the provisions of this section, summary judgment shall not be denied on grounds of credibility or for want of cross-examination of witnesses furnishing affidavits or declarations in support of the summary judgment, except that summary judgment may be denied in the discretion of the court, where the only proof of a material fact offered in support of the summary judgment is an affidavit or declaration made by an individual who was the sole witness to such fact; or where a material fact is an individual's state of mind, or lack thereof, and such fact is sought to be established solely by the individual's affirmation thereof.

If it appears that the proof supports the granting of such motion as to some but not all the issues involved in the action, or that one or more of the issues raised by a claim is admitted, or that one or more of the issues raised by a defense is conceded, the court shall, by order, specify that such issues are without substantial controversy. At the trial of the action the issue so specified shall be deemed established and the action shall proceed as to the issues remaining.

If it appears from the affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented, the court shall deny the motion, or order a continuance to permit

affidavits to be obtained or discovery to be had or may make such other order as may be just.

If the court determines at any time that any of the affidavits are presented in bad faith or solely for purposes of delay, the court shall order the party presenting such affidavits to pay the other party the amount of the reasonable expenses which the filing of the affidavits caused such other party to incur.

Except where a separate judgment may properly be awarded in the action, no final judgment shall be entered on a motion for summary judgment prior to the termination of such action, but the final judgment in such action shall, in addition to any matters determined in such action, award judgment as established by the summary proceeding herein provided for.

A summary judgment entered under this section is an appealable judgment as in other cases. [1973 ch 366 §2; 1976 ch 675 §1; 1978 ch 1949].